THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

–

WRIT PETITION NO.19356 OF 2001

DT.21-03-2006

–

BETWEEEN:

Union of India rep. By
South Central Railway,
Sanchalan Bhavan, Secunderabad
and 2 others

…. Petitioners

A n d

Sunderaiah, s/o K.Narsaiah,
Aged 61 years, Retd.Mail/Exp.Driver,
House No.MIG-342, A.P. Housing Board,
Kritinagar, Laxmipuram,
Warangal, Warangal Dist.

... Respondents

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

–

WRIT PETITION NO.19356 OF 2001

ORDER: (Per MVR,J)

This petition is filed by the Railways against the judgment of the Central Administrative Tribunal, Hyderabad Bench [for brevity 'the Tribunal'] dated 25.01.2001 rendered in Original Application No.811 of 1999 on its file, allowing the application of the respondent herein and quashing the order of reversion of the respondent herein to a lower post for a period of six months, passed by the revisional authority.

The respondent herein was a goods train driver. On the intervening night of 04/05-07-1983 at 0-40 hours, he was assigned with the driver's duty on a light engine. The train was to run between Bellampalli and Peddampet and from Peddampet to Balharshah. The respondent refused to work the train further from Sirpur Town Station, when it reached Sirpur Town station. Despite the Additional Divisional Railway Manager asking on phone, he refused to work the train up to Balharshah. Therefore, it appears that some dislocation was caused. In the writ petition, it is alleged that the respondent undertook to work the train up to Balharshah, but failed to do so. However, as per the averments in the O.A filed by the respondent before the Tribunal, which are culled out in the order of the Tribunal, he worked the train till Balharshah. However, all the orders are silent on this aspect. He was placed under suspension by the Divisional Mechanical Engineer, Secunderabad for insubordination. In the departmental enquiry, he was found guilty of the charge. The appointing authority removed him from service by its order dated 24-05-1985. The respondent carried the matter in O.A.No.364 of 1986 to the Tribunal, the same was allowed on the ground that the respondent was not given an opportunity of representation against the enquiry officer's report, before passing the orders of removal. Thereafter, a fresh enquiry was held. This time, order was passed awarding punishment of reduction in the rank from the post of driver to that of shunter for a period of three years. The respondent carried the matter in appeal and the appellate authority by its order dated 26-10-1992 reduced the punishment of reversion to the post of shunter from three years with cumulative effect to one year without cumulative effect. Then the respondent further carried the matter to the revisional authority, which by its order dated 08-01-1999 further reduced the punishment from one year to six months. With undaunted spirit and determination, the respondent further carried the matter to the Tribunal in

O.A.No.811 of 1999. The Tribunal passed the impugned order dated 25-01-2001, allowing his application. The respondent had already retired from service.

The learned Standing Counsel for Railways contends that the order of the Tribunal is not justified and it would have upheld the reversion order, as modified by the revisional authority. On the other hand, the learned counsel for the respondent contends that the impugned order is a justified one in the circumstances of the case.

Therefore, the point that arises for consideration is:

> Whether the impugned order is not justified and the Central Administrative Tribunal ought to have confirmed the order of the revisional authority.

We have gone through the record carefully. The Divisional Railway Manager who imposed the punishment of reduction in rank for a period of three years felt that the refusal to work the train further is an act of insubordination and indiscipline. The Chief Operations Manager, who dealt with the appeal, held as under:-

> "He gave notice at Rechni Road for relief after completion of 10 hrs duty. He reached Sirpur at 1445 hrs and asked for relief since he had completed 10 hrs duty by that time. Actually by that time he had completed 1400 hrs duty from 'signing on'. His asking for relief, therefore, is as per rules.
>
> He gave a memo for relief at Rechni Road in order to enable the SCOR to arrange him relief in time. It has been stated in the evidence that the Section Controller had asked the Driver whether he requires any relief at BPA. There is no evidence, however, in the Control Chart about it. He had asked for relief well in time at Rechni Road which is corroborated by PCOR. The actual departure from Sirpur Town was 1715 hrs and the train arrived at 2015 hrs. Had the Driver worked the train from Sirpur Town through to BPQ without relief, he may have reached BPQ well beyond the duty hours.
>
> The action taken by Sri Sunderaiah in asking for relief is in order. There is failure on the part of the Administration i.e., SCOR and PCOR in not arranging relief in time even though they had been informed well in time. There is, however, indication that the Driver had not obeyed the orders of ADRM who had spoken to him to work the train up to BPQ even beyond the duty hours, which cannot be condoned.

From the above excerpts, it is clear that a genuine request was made by the respondent for relief and there was failure on the part of the administration in not arranging relief in time even though they were informed well in time. However, the appellate authority felt that since the driver had not obeyed the orders of the superiors, the respondent must take the punishment.

In the order passed by the revisional authority, it is observed as under:-

> "Going to the merit of the case, it is observed that Shri Sundaraiah had been taken up for disobeying the orders given by ADRM on the material day, he had already worked 14 hours from the date of 'Signing on' and had asked for relief. Under extant rules, he can ask for his relief being on long hours. But this has to be seen against the particular context of operation prevailing on that day and the proximity of the next crew changing station which was at BPQ. His curt refusal to work in train had caused 03 hours 50 minutes detention to the train and avoidable dislocation to train services. This cannot be condoned.

Thus, it is clear that the claim of the respondent for relief though justified, he was punished with reversion to a lower cadre on the ground that his refusal to work the train further up to Balharshah amounts to insubordination. It is clear from the orders that he worked at least for 14 hours.

It is not denied that working on the goods train for 14 hours is an arduous task. The Tribunal felt that since he worked for 14 hours the view taken by the authorities below appears to be opposed to the facts and findings. It is not as if the respondent had not worked during his duty hours. He not only completed his duty, but worked extra hours. The finding of the Chief Operations Manager is that there is failure on the part of the administration in not arranging relief in time even though the respondent informed them well in time. Therefore, the blame cannot be put on the respondent. Over burdening the driver with extra hours on duty would also lead to undesirable consequences. The punishment of reversion for six months for refusal to follow the order of the superiors, after once duty period is over, is certainly an excessive punishment. Even censure or warning would have been sufficient. However, since the respondent had already retired from service, even the punishment of censure

would not serve the purpose. Therefore, in the circumstances we do not find, at this stage, any reason to reverse the order of the Central Administrative Tribunal. This writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed, but in the circumstances, without costs.

J.CHELAMESWAR,J

M.VENKATESWARA REDDY, J

Dt.21-03-2006

Gs/Lrkm